

AMENDED IN ASSEMBLY APRIL 4, 2005

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 1288

Introduced by Assembly Member Chu

February 22, 2005

An act to amend Sections 136.2 and 11106 of the Penal Code, relating to court orders.

LEGISLATIVE COUNSEL'S DIGEST

AB 1288, as amended, Chu. Court orders.

(1) Existing law provides a mechanism whereby the court may issue a protective order.

This bill would require a court, under specified circumstances, to issue a protective order to a defendant charged with domestic violence that would require, among other things, the relinquishment of his or her firearms. A failure to comply with the provisions of that protective order would result in a misdemeanor.

By adding to the duties of local employees, this bill would impose a state-mandated local program. By imposing a crime for a violation of the above-described protective order, the bill would create a state-mandated local program.

(2) Existing law requires the Attorney General to maintain a registry of information reported to the Department of Justice regarding firearms, including, among other things, copies of licenses to carry firearms and applications for licenses to carry firearms. Existing law provides generally that information contained in the registry shall, upon proper application, be furnished to specified peace officers. However, information relating to firearms that are not handguns shall not generally be retained but shall instead be destroyed, as specified; a violation of this provision is a misdemeanor.

This bill would, as an exception to the above provisions, authorize specified peace officers ~~to whom dealers' records of sales of firearms are furnished to disseminate a record, or information obtained from a record~~ *the name of the subject of the record, the number of firearms listed in the record, and the description of any firearm, including the make, model, and caliber from the record, relating to a particular sale of a firearm* any firearm's sale, transfer, registration, or license record, or any information reported to the Department of Justice pursuant to specified provisions, if ~~the purchaser~~ *the subject of the record* has been arraigned for domestic violence *and is being prosecuted or is serving a sentence for the crime*, or the subject of the record is the subject of an emergency protective order, a temporary restraining order, or an order after hearing, *which is in effect and has been issued by a family court under the Domestic Violence Protect Act and the record or information is disseminated only to the victim of the crime or to the person who has obtained the emergency protective order, the temporary restraining order, or the order after hearing issued by the family court. The bill would further provide that the victim or person to whom such information is disseminated may disclose it as he or she deems necessary to protect himself, herself, or another person from bodily harm by the person who is the subject of the record.*

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 136.2 of the Penal Code is amended to
2 read:

3 136.2. Upon a good cause belief that harm to, or intimidation
4 or dissuasion of, a victim or witness has occurred or is

1 reasonably likely to occur, any court with jurisdiction over a
2 criminal matter may issue orders including, but not limited to, the
3 following:

4 (a) Any order issued pursuant to Section 6320 of the Family
5 Code.

6 (b) An order that a defendant shall not violate any provision of
7 Section 136.1.

8 (c) An order that a person before the court other than a
9 defendant, including, but not limited to, a subpoenaed witness or
10 other person entering the courtroom of the court, shall not violate
11 any provisions of Section 136.1.

12 (d) An order that any person described in this section shall
13 have no communication whatsoever with any specified witness
14 or any victim, except through an attorney under any reasonable
15 restrictions that the court may impose.

16 (e) An order calling for a hearing to determine if an order as
17 described in subdivisions (a) to (d), inclusive, should be issued.

18 (f) An order that a particular law enforcement agency within
19 the jurisdiction of the court provide protection for a victim or a
20 witness, or both, or for immediate family members of a victim or
21 a witness who reside in the same household as the victim or
22 witness or within reasonable proximity of the victim's or
23 witness' household, as determined by the court. The order shall
24 not be made without the consent of the law enforcement agency
25 except for limited and specified periods of time and upon an
26 express finding by the court of a clear and present danger of
27 harm to the victim or witness or immediate family members of
28 the victim or witness.

29 For purposes of this subdivision, "immediate family members"
30 include the spouse, children, or parents of the victim or witness.

31 (g) (1) Any order protecting victims of violent crime from ~~all~~
32 ~~contact by the defendant, or contact,~~ with the intent to annoy,
33 harass, threaten, or commit acts of violence, by the defendant.
34 The court or its designee shall transmit orders made under this
35 subdivision to law enforcement personnel within one business
36 day of the issuance, modification, extension, or termination of
37 the order, pursuant to subdivision (a) of Section 6380 of the
38 Family Code. It is the responsibility of the court to transmit the
39 modification, extension, or termination orders made under this
40 subdivision to the same agency that entered the original

1 protective order into the Domestic Violence Restraining Order
2 System.

3 (2) (A) If a court does not issue an order pursuant to
4 paragraph (1) in a case in which the defendant is charged with a
5 crime of domestic violence as defined in Section 13700, the court
6 on its own motion shall issue a protective order upon a good
7 cause belief that harm to, or intimidation or dissuasion of, a
8 victim or witness has occurred or is reasonably likely to occur,
9 that provides as follows:

10 (i) The defendant shall not own, possess, purchase, receive, or
11 attempt to purchase or receive, a firearm while the protective
12 order is in effect.

13 (ii) The defendant shall relinquish any firearms that he or she
14 owns or possesses pursuant to Section 527.9 of the Code of Civil
15 Procedure.

16 (B) Every person who owns, possesses, purchases, or receives,
17 or attempts to purchase or receive, a firearm while this protective
18 order is in effect is punishable pursuant to subdivision (g) of
19 Section 12021.

20 (3) Any order issued, modified, extended, or terminated by a
21 court pursuant to this subdivision shall be issued on forms
22 adopted by the Judicial Council of California and that have been
23 approved by the Department of Justice pursuant to subdivision (i)
24 of Section 6380 of the Family Code. However, the fact that an
25 order issued by a court pursuant to this section was not issued on
26 forms adopted by the Judicial Council and approved by the
27 Department of Justice shall not, in and of itself, make the order
28 unenforceable.

29 (4) Any person violating any order made pursuant to
30 subdivisions (a) to (g), inclusive, may be punished for any
31 substantive offense described in Section 136.1, or for a contempt
32 of the court making the order. A finding of contempt shall not be
33 a bar to prosecution for a violation of Section 136.1. However,
34 any person so held in contempt shall be entitled to credit for any
35 punishment imposed therein against any sentence imposed upon
36 conviction of an offense described in Section 136.1. Any
37 conviction or acquittal for any substantive offense under Section
38 136.1 shall be a bar to a subsequent punishment for contempt
39 arising out of the same act.

1 (h) (1) A person subject to a protective order issued under this
2 section shall not own, possess, purchase, receive, or attempt to
3 purchase or receive a firearm while the protective order is in
4 effect.

5 (2) The court shall order a person subject to a protective order
6 issued under this section to relinquish any firearms he or she
7 owns or possesses pursuant to Section 527.9 of the Code of Civil
8 Procedure.

9 (3) Every person who owns, possesses, purchases or receives,
10 or attempts to purchase or receive a firearm while the protective
11 order is in effect is punishable pursuant to subdivision (g) of
12 Section 12021 of the Penal Code.

13 (i) (1) In all cases where the defendant is charged with a
14 crime of domestic violence, as defined in Section 13700, the
15 court shall consider issuing the above-described orders on its
16 own motion. All interested parties shall receive a copy of those
17 orders. In order to facilitate this, the court's records of all
18 criminal cases involving domestic violence shall be marked to
19 clearly alert the court to this issue. ~~In any case in which a court~~
20 ~~orders that the protective order be terminated, the district~~
21 ~~attorney or city attorney shall notify the victim of the order 30~~
22 ~~days before the termination takes effect.~~

23 (2) In those cases in which a complaint, information, or
24 indictment charging a crime of domestic violence, as defined in
25 Section 13700, has been issued, a restraining order or protective
26 order against the defendant issued by the criminal court in that
27 case has precedence in enforcement over any civil court order
28 against the defendant.

29 (3) Custody and visitation with respect to the defendant and
30 his or her minor children may be ordered by a family or juvenile
31 court consistent with the protocol established pursuant to
32 subdivision (i).

33 (j) On or before January 1, 2003, the Judicial Council shall
34 promulgate a protocol, for adoption by each local court in
35 substantially similar terms, to provide for the timely coordination
36 of all orders against the same defendant and in favor of the same
37 named victim or victims. The protocol shall include, but shall not
38 be limited to, mechanisms for assuring appropriate
39 communication and information sharing between criminal,
40 family, and juvenile courts concerning orders and cases that

1 involve the same parties, and shall permit a family or juvenile
2 court order to coexist with a criminal court protective order
3 subject to the following conditions:

4 (1) Any order that permits contact between the restrained
5 person and his or her children shall provide for the safe exchange
6 of the children and shall not contain language either printed or
7 handwritten that violates a “no contact order” issued by a
8 criminal court.

9 (2) Safety of all parties shall be the courts’ paramount
10 concern. The family or juvenile court shall specify the time, day,
11 place, and manner of transfer of the child, as provided in Section
12 3100 of the Family Code.

13 (k) On or before January 1, 2003, the Judicial Council shall
14 modify the criminal and civil court protective order forms
15 consistent with this section.

16 SEC. 2. Section 11106 of the Penal Code is amended to read:

17 11106. (a) (1) In order to assist in the investigation of crime,
18 the prosecution of civil actions by city attorneys pursuant to
19 paragraph (3) of subdivision (c), the arrest and prosecution of
20 criminals, and the recovery of lost, stolen, or found property, the
21 Attorney General shall keep and properly file a complete record
22 of all copies of fingerprints, copies of licenses to carry firearms
23 issued pursuant to Section 12050, information reported to the
24 Department of Justice pursuant to Section 12053, dealers’
25 records of sales of firearms, reports provided pursuant to Section
26 12072 or 12078, forms provided pursuant to Section 12084,
27 reports provided pursuant to Section 12071 that are not dealers’
28 records of sales of firearms, and reports of stolen, lost, found,
29 pledged, or pawned property in any city or county of this state,
30 and shall, upon proper application therefor, furnish this
31 information to the officers referred to in Section 11105.

32 (2) (A) Any officer referred to in paragraphs (1) to (6),
33 inclusive, of subdivision (b) of Section 11105, ~~to whom dealers’~~
34 ~~records of sales of firearms are furnished, may disseminate a~~
35 ~~record, or information obtained from a record, relating to a~~
36 ~~particular sale if the following conditions are met: may~~
37 *disseminate the name of the subject of the record, the number of*
38 *the firearms listed in the record, and the description of any*
39 *firearm, including the make, model, and caliber, from the record*
40 *relating to any firearms sale, transfer, registration, or license*

record, or any information reported to the Department of Justice pursuant to Sections 12021.3, 12053, 12071, 12072, 12077, 12078, 12082, or 12285, if the following conditions are met:

(i) The ~~purchaser~~ subject of the record has been arraigned for a crime in which the victim is a person described in subdivisions (a) to (f), inclusive, of Section 6211 of the Family Code *and is being prosecuted or is serving a sentence for the crime*, or the ~~purchaser~~ subject of the record is the subject of an emergency protective order, a temporary restraining order, or an order after hearing, *which is in effect and has been issued by a family court under the Domestic Violence Protection Act set forth in Article 1 (commencing with Section 6320) of Chapter 2 of Part 4 of Division 10 of the Family Code. Division 10 (commencing with Section 6200) of the Family Code.*

(ii) The ~~record or~~ information is disseminated only to the victim of the crime or to the person who has obtained the emergency protective order, the temporary restraining order, or the order after hearing issued by the family court.

(B) The victim or person to whom such ~~a record or~~ information is disseminated may disclose it as he or she deems necessary to protect himself or herself or another person ~~at risk from bodily harm by the person who is the subject of the record.~~

(b) (1) Except as provided in paragraph (2) of subdivision (a), the Attorney General shall not retain or compile any information from reports filed pursuant to subdivision (a) of Section 12078 for firearms that are not handguns, from forms submitted pursuant to Section 12084 for firearms that are not handguns, or from dealers' records of sales for firearms that are not handguns. All copies of the forms submitted, or any information received in electronic form, pursuant to Section 12084 for firearms that are not handguns, or of the dealers' records of sales for firearms that are not handguns shall be destroyed within five days of the clearance by the Attorney General, unless the purchaser or transferor is ineligible to take possession of the firearm. All copies of the reports filed, or any information received in electronic form, pursuant to subdivision (a) of Section 12078 for firearms that are not handguns shall be destroyed within five days of the receipt by the Attorney General, unless retention is necessary for use in a criminal prosecution.

(2) A peace officer, the Attorney General, a Department of Justice employee designated by the Attorney General, or any authorized local law enforcement employee shall not retain or compile any information from a firearms transaction record, as defined in paragraph (5) of subdivision (c) of Section 12071, for firearms that are not handguns unless retention or compilation is necessary for use in a criminal prosecution or in a proceeding to revoke a license issued pursuant to Section 12071.

(3) A violation of this subdivision is a misdemeanor.

(c) (1) The Attorney General shall permanently keep and properly file and maintain all information reported to the Department of Justice pursuant to Sections 12071, 12072, 12078, 12082, and 12084 or any other law, as to handguns and maintain a registry thereof.

(2) The registry shall consist of all of the following:

(A) The name, address, identification of, place of birth (state or country), complete telephone number, occupation, sex, description, and all legal names and aliases ever used by the owner or person being loaned the particular handgun as listed on the information provided to the department on the Dealers' Record of Sale, the Law Enforcement Firearms Transfer (LEFT), as defined in Section 12084, or reports made to the department pursuant to Section 12078 or any other law.

(B) The name and address of, and other information about, any person (whether a dealer or a private party) from whom the owner acquired or the person being loaned the particular handgun and when the firearm was acquired or loaned as listed on the information provided to the department on the Dealers' Record of Sale, the LEFT, or reports made to the department pursuant to Section 12078 or any other law.

(C) Any waiting period exemption applicable to the transaction which resulted in the owner of or the person being loaned the particular handgun acquiring or being loaned that firearm.

(D) The manufacturer's name if stamped on the firearm, model name or number if stamped on the firearm, and, if applicable, the serial number, other number (if more than one serial number is stamped on the firearm), caliber, type of firearm, if the firearm is new or used, barrel length, and color of the firearm.

1 (3) Information in the registry referred to in this subdivision
2 shall, upon proper application therefor, be furnished to the
3 officers referred to in Section 11105, to a city attorney
4 prosecuting a civil action, solely for use in prosecuting that civil
5 action and not for any other purpose, or to the person listed in the
6 registry as the owner or person who is listed as being loaned the
7 particular handgun.

8 (4) If any person is listed in the registry as the owner of a
9 firearm through a Dealers' Record of Sale prior to 1979, and the
10 person listed in the registry requests by letter that the Attorney
11 General store and keep the record electronically, as well as in the
12 record's existing photographic, photostatic, or nonerasable
13 optically stored form, the Attorney General shall do so within
14 three working days of receipt of the request. The Attorney
15 General shall, in writing, and as soon as practicable, notify the
16 person requesting electronic storage of the record that the request
17 has been honored as required by this paragraph.

18 SEC. 3. No reimbursement is required by this act pursuant to
19 Section 6 of Article XIII B of the California Constitution for
20 certain costs that may be incurred by a local agency or school
21 district because, in that regard, this act creates a new crime or
22 infraction, eliminates a crime or infraction, or changes the
23 penalty for a crime or infraction, within the meaning of Section
24 17556 of the Government Code, or changes the definition of a
25 crime within the meaning of Section 6 of Article XIII B of the
26 California Constitution.

27 However, if the Commission on State Mandates determines
28 that this act contains other costs mandated by the state,
29 reimbursement to local agencies and school districts for those
30 costs shall be made pursuant to Part 7 (commencing with Section
31 17500) of Division 4 of Title 2 of the Government Code.